

**United States Department of Labor
Employees' Compensation Appeals Board**

A.N., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Albany, NY, Employer**

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**Docket No. 17-0061
Issued: April 13, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 17, 2016 appellant filed a timely appeal from an August 18, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.²

ISSUE

The issue is whether appellant met her burden of proof to establish that her cervical radiculopathy was caused by the accepted June 29, 2016 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant filed new evidence with her appeal to the Board. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

On appeal appellant argues that she is entitled to wage-loss compensation for the two days she was off work due to the accepted fall at work on June 29, 2016.

FACTUAL HISTORY

On June 30, 2016 appellant, then a 65-year-old physician, filed a traumatic injury claim (Form CA-1) alleging that on June 29, 2016 she tripped on a couch, fell against a door, and then fell to the floor onto her knees. She related that this incident caused cervical radiculopathy. Appellant stopped work on June 30, 2016. OWCP received a report of work status (Form CA-3) indicating that she returned to work on July 5, 2016.

In a progress note dated June 29, 2016, from Dr. Gene R. Pellerin, Jr., a treating Board-certified emergency room physician, a description of the June 29, 2016 incident was provided and appellant's complaints of pain radiating from her neck descending down into her left arm were noted. Appellant's physical examination revealed left trapezius spasm with tenderness and nontender left forearm. A cervical magnetic resonance imaging (MRI) scan was reviewed and showed no traumatic osseous cervical spine injury. Findings from a computerized tomography (CT) scan showed no evidence of cervical spine traumatic osseous injury and moderate C2-3 and C5-6 spinal canal stenosis. Appellant's diagnosis was cervical radiculopathy status post fall.

An employee health record dated June 30, 2016 from Dr. Pellerin provided physical examination findings and noted that appellant's injury occurred when she fell after tripping over the leg of a sofa. Diagnostic tests were reviewed and noted to show mild C5-6 radiculopathy. This report related that appellant was in an off-duty status at the time of the evaluation and reevaluation would be done on July 5, 2016. Under diagnosis, Dr. Pellerin noted mild C5-6 radiculopathy and circled "direct cause" under opinion.

A June 30, 2016 report of employee's emergency treatment note, signed by Ms. Burkart-Jayez, and cosigned by Dr. Pellerin, prescribed medications and indicated that appellant was unable to work. Dr. Pellerin subsequently released appellant to full-duty work in a July 5, 2016 note.

By correspondence dated July 13, 2016, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised that a medical opinion from a physician explaining how the June 29, 2016 incident caused or aggravated a diagnosed condition was necessary to support her claim. She was afforded 30 days to provide this information. No further evidence was received.

By decision dated August 18, 2016, OWCP denied appellant's traumatic injury claim, finding that the submitted evidence was insufficient to establish an injury causally related to the accepted June 29, 2016 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the

³ 5 U.S.C. § 8101 *et seq.*

United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁶ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹¹

ANALYSIS

Appellant filed a traumatic injury claim alleging that she sustained cervical radiculopathy due to a fall after tripping over the leg of a sofa at work. It is undisputed that the June 29, 2016 incident occurred as alleged. However, the Board finds that she failed to submit medical evidence sufficient to establish that this work incident caused or aggravated her diagnosed cervical radiculopathy.

Appellant submitted a progress note dated June 29, 2016 from Dr. Pellerin reporting pain radiating from her neck to down into her left hand as the result of tripping over a couch and

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ B.F., Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

⁷ D.B., 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁸ C.B., Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

⁹ Y.J., Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹⁰ J.J., Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹¹ I.J., 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

falling onto her left arm. Dr. Pellerin reviewed diagnostic tests and provided examination findings. He noted findings and diagnosed cervical radiculopathy, post fall. Regarding causal relationship, Dr. Pellerin merely repeated the history of injury as reported by appellant without providing his own opinion regarding whether appellant's medical condition was work related. As he repeated appellant's belief about the cause of her condition, without offering his own opinion on causal relationship, his reports are of limited probative value.¹² An opinion from a physician on causal relationship is insufficient to establish the claim if it does not explain the reasons why the accepted incident caused or aggravated a diagnosed condition.¹³ Lacking thorough medical rationale on the issue of causal relationship, Dr. Pellerin's progress notes are of limited probative value and thus insufficient to establish that appellant sustained an employment-related injury in the performance of duty on June 29, 2016.¹⁴

Appellant also submitted a June 30, 2016 employee health record of Dr. Pellerin which noted an injury history of appellant falling after tripping over the leg of a sofa. Physical examination findings were provided, diagnostic tests reviewed, and a diagnosis was made of mild C5-6 radiculopathy. Dr. Pellerin diagnosed mild C5-6 radiculopathy and under opinion circled "direct cause." The Board has held that an affirmative notation in response to a form question on causal relationship is insufficient, without medical rationale, to establish causal relationship.¹⁵

The record also contains reports of emergency treatment dated June 30 and July 5, 2016 from Dr. Pellerin. Dr. Pellerin released appellant to return to work on July 5, 2016. The Board finds, however, that Dr. Pellerin again did not address causation. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁶ Thus, this evidence is also insufficient to meet appellant's burden of proof.

On appeal appellant argues that she is entitled to wage-loss compensation for the two days she was unable to work as a result of the June 29, 2016 employment incident. As found above, none of the medical evidence appellant submitted provides any rationale explaining how the trip and fall over the couch on June 29, 2016 caused the diagnosed condition. Appellant has therefore not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹² See *D.D.*, Docket No. 15-291 (issued May 22, 2015); see also *S.W.*, Docket No. 15-1538 (issued December 14, 2015).

¹³ *Id.*

¹⁴ *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹⁵ See *K.T.*, Docket No. 15-1758 (issued May 24, 2016); *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁶ *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006).

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that her cervical radiculopathy was causally related to the accepted June 29, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 18, 2016 is affirmed.

Issued: April 13, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board